IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5018 OF 2005

Laxman Dharma Shelke ...Petitioner
Vs.
Union of India & Ors. ...Respondents

Mr. Raja Shirke Adv. with Mr. M.S. Karnik Adv. for Petitioner
Mr. S.S. Sarkar Adv. for Respondents 1 to 6

CORAM: F.I.REBELLO & ROSHAN DALVI, JJ.
DATED: 6TH DECEMBER, 2005

P.C.

. The Petitioner was a Constable in Central Industrial Security Force unit and was posted at Rashtriya Chemicals and Fertilisers Unit, Thal, Dist: Raigad. He was chargesheeted for absenting himself from 7th July 2002 without leave/permission from the competent authority. The charge no.2 indicates that he absented himself from regimental duties, 'C' shift duty on 8th July 2002 and from CISF Unit, RCF Thal with effect from 9th July 2002 and was absent till the date of chargesheet which is dated 10th March 2003. Article 3 of the charge was that the chargesheeted employee suppressed facts to the department regarding filing of anticipatory bail application being Cri. Misc. Appln. No.303 of 2002 before Additional Sessions Judge in connection with C.R.No.73 of 2002 under Sections 380 and 415 of Indian Penal Code registered with Alibagh Police Station regarding theft

of computers with accessories from Administrative Building, RCF Thal.

2. Various witnesses were examined. Based upon the inquiry report an opportunity was given to the Petitioner to show cause. The Disciplinary Authority by its final order dated 10th March 2003, considering the material on record and the enquiry report and also considering the gravity of the misconduct, imposed penalty of removal from services.

3. The Petitioner aggrieved preferred an appeal before the Appellate Authority. The Appellate Authority reappreciated the evidence and also noted the proceedings in anticipatory bail before the Sessions Court and after considering the point for determination concurred with the findings arrived by the Disciplinary authority and found that there was no case for interfering and accordingly dismissed the Appeal. It is this order which is the subject matter of the present proceeding.

4. On behalf of the Petitioner it is sought to be contended that he has been acquitted in the criminal case. Even if that be so that was not the subject matter of the chargesheet. Even otherwise on perusal of the judgment it is clear that it was not a clean acquittal. The acquittal was on account of nonavailability of witnesses. In other words as the

prosecution was not able to produce the witnesses. The main findings against the Petitioner are unauthorised absence from the duty. There are two concurrent findings of facts.

5. Having considered the proceedings and the nature of misconduct of an employee of a para-military organisation we do not find that the punishment imposed is harsh or disproportionate. In these circumstances we do not think this to be a fit case to exercise our extra ordinary jurisdiction. Hence, Petition dismissed.

(F.I.REBELLO J.)

(ROSHAN DALVI, J.)